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## OLR Bill Analysis

### sSB 373

#### ***AN ACT CONCERNING THE UNIFORM COMMERCIAL CODE, THE ELECTRONIC FUND TRANSFER ACT AND THE ISSUANCE OF SUBPOENAS ON A NONPARTY WITNESS.***

#### **SUMMARY:**

This bill:

1. provides additional protections for witnesses who are not parties in civil or probate proceedings from incurring significant expenses in responding to a subpoena to produce books, papers, documents, or other things and
2. addresses a gap in the application of state and federal law to remittance transfers (see BACKGROUND) to allow state law to apply whenever federal law does not.

EFFECTIVE DATE: October 1, 2014

#### **SUBPOENAS TO WITNESSES WHO ARE NOT PARTIES**

The bill gives additional protections to witnesses who are not parties in civil or probate proceedings and are subpoenaed to produce books, papers, documents, or other things. Existing law contains protections for any witness, whether a party or not, when such a subpoena relates to a deposition. In such cases, the law allows a:

1. person receiving the subpoena to object in writing to producing some or all of the requested items, within 15 days of being served the subpoena but no later than the compliance date specified in the subpoena;
2. requesting party to seek a court order if he or she seeks compliance with the subpoena; and
3. court, until the time specified in the subpoena for compliance, to

(a) quash or modify the subpoena if it is unreasonable and oppressive or seeks items that are not material or (b) require the party who issued the subpoena to advance the reasonable cost of producing the material (CGS § 52-148e and Conn. Practice Book § 13-28).

The bill similarly protects nonparty witnesses in civil or probate proceedings when served with a subpoena for documents and tangible things. It contains the same notice and objection provisions as existing law. But it adds protections allowing a nonparty witness to file a specific written objection based on the undue burden and expense of complying with the subpoena. The witness must include with the objection an affidavit on the estimated or actual costs of compliance.

After an objection, the bill allows the party issuing the subpoena to obtain a court order to compel production of the documents. A court order enforcing compliance must protect the witness from significant expense and may require the party issuing the subpoena to reimburse the witness' reasonable attorneys' fees and costs related to electronic discovery. The court also has the options under existing law to quash or modify the subpoena or require the requesting party to advance the witness' costs.

Because existing law applies to subpoenas related to a deposition and the bill appears to do so as well, it is unclear which provisions apply when a subpoena directed to a nonparty relates to a deposition.

## **REMITTANCE TRANSFERS AND ELECTRONIC FUND TRANSFERS**

Currently, state law (Uniform Commercial Code (UCC) Article 4A) generally governs commercial fund transfers unless any part of the transfer is governed by the federal Electronic Fund Transfer Act of 1978 (EFTA). EFTA applies to remittance transfers, which are a type of electronic transfer of funds, but in some circumstances EFTA does not govern all parts of such transfers.

The bill applies state law (specifically UCC Act. 4A) to the remittance transfers unless the remittance transfer is covered by EFTA

as an electronic funds transfer. The bill applies EFTA's provisions when there is an inconsistency between state and federal law regarding a fund transfer.

## **BACKGROUND**

### ***Uniform Commercial Code Article 4A***

Article 4A of the Uniform Commercial Code governs funds transfers. It establishes the rights and responsibilities of the parties to a funds transfer, including payment obligations among the parties and allocation of risk of loss for unauthorized or improperly executed payment orders. Article 4A was drafted principally to govern fund transfers involving commercial entities (CGS § 42a-4A, et seq.).

### ***EFTA***

EFTA (P.L. 95-630) provides a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund and remittance transfer systems. Its primary objective is the protection of individual consumer rights (15 U.S.C. § 1693 et seq.).

Under EFTA, an electronic funds transfer is any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account (15 U.S.C. § 1693a).

### ***Dodd-Frank Act Amendments***

The Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-2013) amended EFTA to create new protections for consumers who send remittance transfers, including transfers to designated recipients located in a foreign country.

### ***Remittance Transfers***

Federal law defines a remittance transfer as the electronic transfer of funds, to a designated recipient, that is initiated by a remittance transfer provider at the request of a sender located in any state whether or not the (1) sender holds an account with the remittance

transfer provider or (2) remittance transfer is also an electronic fund transfer (15 U.S.C. § 1693o-1)).

**COMMITTEE ACTION**

Banks Committee

Joint Favorable Substitute

Yea 17 Nay 0 (03/18/2014)